

Appl. No. 10/025,059
Atty. Docket No. 8819
Amdt. Dated 2/06/04
Reply to Office Action of 12/30/2003
Customer No. 27752

Remarks

The issue on appeal will be: Whether or not Benecke anticipates (35 USC 102(e)) the claimed invention, particularly the underlined portions of the following recitation from Claim 1:

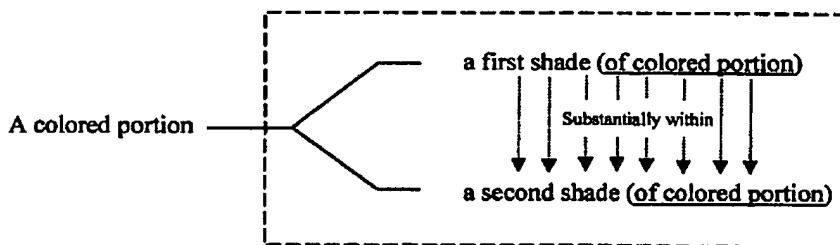
an absorbent article having a colored portion and a non-colored portion, the colored portion and the non-colored portion being viewable from the viewing surface of the topsheet, the colored portion having a first shade and a second shade, the first shade being positioned substantially within the second shade, the second shade being different from the first shade, the shades operating to create a perception of depth within the absorbent article by a user looking upon the viewing surface of the topsheet.

Applicant agrees that Benecke teaches a colored portion and a non-colored portion. However, for the reasons set forth below, the Applicant maintains that the Examiner has failed to indicate in Benecke where she finds any anticipating (35 USC 102(e)) disclosure for the above-underlined claim limitation.

First, Benecke does not teach the colored portion having a first shade and a second shade. Specifically, Benecke does not teach, disclose, or suggest at least these two claim elements:

- (a) the colored portion having a first shade and a second shade, or
- (b) the first shade being positioned substantially within the second shade.

Simply put, the two elements of Claim 1 above require the following, shown diagrammatically:



Second, as discussed below, Benecke does not disclose any color differences are for the claimed purpose of creating a perception of depth within the absorbent article.

Appl. No. 10/025,059
Atty. Docket No. 8819
Amdt. Dated 2/06/04
Reply to Office Action of 12/30/2003
Customer No. 27752

I. Two shades within one color are not disclosed in Benecke paragraph 0073

At the top of page 3 of the Final Office Action the Examiner stated that the two above-identified claim elements are found in Benecke at page 7, paragraph 0073.

The Applicant disagrees.

Paragraph 0073 teaches, with respect to the colored portion (i.e., the “fluid impermeable colored surfaces” of Benecke), that the reflectivity of the colored portion can be changed by the addition of pigments or dyes or highly reflective materials.

However, changing the reflectivity as taught by Benecke does not result in a colored portion having a first shade and a second shade. This is simply not disclosed, taught, or suggested in Benecke. “Increasing reflectance” teaches nothing about “shades” as claimed. Mixing a pigment to achieve increased reflectance teaches nothing about any resulting difference in shades, much less one shade being positioned substantially within another shade. To find any such teaching in Benecke is pure speculation based upon hindsight analysis of the Applicant’s invention.

II. Two shades within one color are not disclosed in Benecke paragraph 0075

On page 3 of the Final Office Action the Examiner also implied (vaguely, without any specificity as to specifically-recited claim elements) that the two above-identified claim elements are found in Benecke at paragraph 0075.

The Applicant disagrees.

First, the Examiner simply stated: “Benecke also discloses that the more than one color may be presented in the hydrophobic surfaces as set forth on page 7, paragraph 0075.” The applicant respectfully submits that the accuracy of that statement is irrelevant to the question of novelty. Even if true, it does not anticipate what is claimed. Specifically, it does not address the above-mentioned recited claim element requiring at least two shades within one colored portion.

Paragraph 0075 teaches, with respect to a color masking layer that “[s]uch visual features...can contribute to the color masking effects primarily...by providing visual distraction to the pad user...” According to paragraph 0075, such “distraction” can be may be supplied by using “any of the colors available within the visible spectrum,” and “more than one color or material may be presented...”

Appl. No. 10/025,059
Atty. Docket No. 8819
Amdt. Dated 2/06/04
Reply to Office Action of 12/30/2003
Customer No. 27752

However, although paragraph 0075 discusses "more than one color," it simply does not teach, disclose or otherwise suggest the above-mentioned recited claim element requiring at least two shades within one colored portion, much less the first shade being positioned substantially within the second shade.

III. The claimed perception of depth is not disclosed in Benecke paragraph 0075

At the top of page 3 of the Final Office Action the Examiner states that "the at least two shades operating to create a perception of depth within the absorbent article by a user looking upon the viewing surface of the topsheet as set forth on page 3, paragraph 0048."

The Applicant disagrees.

Paragraph 0048 mentions "visual blocking." Paragraph 0048 is silent about depth perception. Paragraph 0048 does not mention depth perception. Paragraph 0048 says nothing about two shades (within one color, as claimed) or depth perception, much less about any relationship between two shades and depth perception.

Therefore, contrary to the Examiner's pure speculation, Benecke fails to teach, disclose or suggest that the color differences in any way operate to create a perception of depth within the absorbent article by a user looking upon the viewing surface of the topsheet, as claimed.

IV. The Examiner's "Response to Arguments" fails to address Applicants' arguments

On page 5 of the Final Office Action the Examiner responded to Applicants' previous arguments by simply referring to the rejection of Claim 1 (addressed herein above) and briefly repeating the previously stated arguments.

As can be understood from Applicants' arguments above, the Examiner's rejection falls short of the requirements for finding lack of novelty. Beyond general reference to paragraph numbers, the Examiner simply has not indicated what disclosure in Benecke anticipates Applicants claimed invention. The vague references to paragraph numbers have been shown above to be lacking in any anticipatory teachings within Benecke.

Appl. No. 10/025,059
Atty. Docket No. 8819
Amdt. Dated 2/06/04
Reply to Office Action of 12/30/2003
Customer No. 27752

Conclusion

In light of the above remarks, it is clear that Benecke does not teach the colored portion having a first shade and a second shade, as recited in Applicants' claim 1. Specifically, Benecke does not teach, disclose, or suggest at least two claim elements:

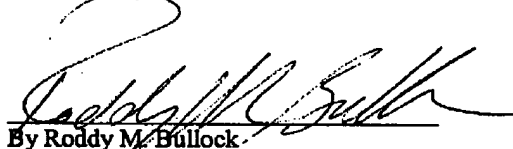
- (a) the colored portion having a first shade and a second shade, or
- (b) the first shade being positioned substantially within the second shade.

Further, Benecke fails to teach, disclose or suggest that any color differences, much less that of two shades within one color, in any way operate to create a perception of depth within the absorbent article by a user looking upon the viewing surface of the topsheet, as claimed.

As can be understood from Applicants' arguments above, the Examiner's rejection falls short of the requirements for finding lack of novelty. The Examiner simply has not indicated what disclosure in Benecke anticipates Applicants' claimed invention. The vague statements relying only on references to paragraph numbers have been shown hereinabove to be lacking in any anticipatory teachings within Benecke.

A Notice of Appeal is filed herewith.

Respectfully submitted,
CHRISTON, *et al.*



By Roddy M. Bullock
Attorney for Applicants
Registration No. 37,290
(513) 634-0870

February 6, 2004
Customer No. 27752